DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Connecticut Department	)	RM No. 9258
of Public Utility Control for Amendment	)	DA 98-743
to Rule Making	)	

COMMENTS OF GTE SERVICE CORPORATION

Dated: May 7, 1998

GTE Service Corporation and its affiliated domestic telephone operating and wireless companies

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036
(202) 463-5276

Their Attorneys

TABLE OF CONTENTS

SUMMARY

GTE opposes the Connecticut Department of Public Utility Control ("CDPUC") Petition asking the FCC to amend its rule prohibiting technology-specific or service-specific area code overlays.

The FCC twice has ruled that wireless-only telephone area code overlays violate Section 202(a) and Section 201(b) of the Communications Act. Primarily, the FCC has found that such overlays inhibit competition between wireless and wireline carriers and force wireless carriers and their customers to bear the inconvenience and cost of switching phone numbers.

The CDPUC argues that the FCC's policy with respect to service- or technology-specific overlays should not apply until or unless competition exists between wireless and wireline carriers. Past FCC decisions, however, show that the FCC's policy was designed to foster inter-service competition and was not dependent on a finding that any competition existed between wireless and wireline carriers.

The CDPUC next argues that the FCC regulates wireless and wireless carriers differently and that the Commission should therefore not be concerned with numbering overlay plans that treat carriers differently. In reality, particularly since adoption of the Telecommunications Act of 1996, the FCC has embarked upon a policy of ensuring that all providers of telecommunications services face similar regulations and participate in mandate programs. This policy is designed to promote inter-service competition by leveling competitive playing fields. While GTE does not always agree with the FCC's policy, if other regulatory programs are geared toward promoting wireline/wireless

competition, the FCC's numbering policy with respect to service- and technology-specific overlays must not be altered.

Finally, the CDPUC contends that the harmful elements of service- and technology-specific overlays can only have an anticompetitive effect if competition exists. This analysis, however, ignores FCC findings that such overlays violate the Communications Act because they force the segregated carriers and their customers to bear all of the burdens – including dialing disparity and the cost of switching numbers -- of relieving telephone number shortages. These burdens exist whether there is inter-service competition or not.

Because service- or technology-specific overlays discriminate against the segregated carriers, inhibit inter-service competition, and provide no greater number shortage relief than other plans, the FCC should deny the CDPUC Petition.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Connecticut Department	)	RM No. 9258
of Public Utility Control for Amendment	)	DA 98-743
to Rule Making	)	

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its affiliated domestic telephone operating and wireless companies[1] (collectively "GTE") hereby submit comments in opposition to the above-captioned Petition for Rulemaking ("Petition") filed by the Connecticut Department of Public Utility Control ("CDPUC"). In its Petition, the CDPUC asks the Federal Communications Commission ("FCC" or "Commission") to amend its rule prohibiting technology-specific or service-specific area code overlays. By Public Notice issued April 17, 1998, the FCC seeks comment on whether it should initiate a

---

[1] GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Hawaiian Tel International Incorporated, GTE Communications Corporation, GTE Wireless Incorporated and GTE Airfone Incorporated.

rulemaking proceeding on the issues raised in the Petition.[2] For the reasons stated below, GTE opposes the CDPUC Petition.

I. BACKGROUND

The FCC twice has ruled that service- or technology-specific telephone area code overlays violate the Communications Act. First, in the *Ameritech Order,*[3] the Commission found that three facets of Ameritech's plan to adopt a wireless-only overlay violated Section 202(a) of the Communications Act ("the Act"), prohibiting unreasonable discrimination,[4] and Section 201(b) of the Act, prohibiting unjust or unreasonable acts and practices.[5] The Commission found that Ameritech's plan contained the elements of "exclusion" -- the exclusion of wireless providers from obtaining additional codes in the old NPA -- and "segregation" -- the segregation of wireless providers into a separate area code. These elements, the Commission determined, would confer significant competitive advantages on wireline companies in competition with wireless carriers. In addition, the Commission found that Ameritech's "take-back" proposal – the requirement that customers relinquish their existing numbers in favor of numbers issued under the new NPA code – required wireless carriers and their customers exclusively to

---

2 Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited, *Public Notice*, RM No. 9258, DA 98-743 (released April 17, 1998).

3 Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois, *Declaratory Ruling and Order*, IAD File No. 94-102, 10 FCC Rcd 4596 (1995).

4 *Id.*, at 4607-4608.

5 *Id.*, at 4610-4612.

bear the burdens associated with relieving telephone number shortages. The Commission found, further, that Ameritech's justification for the discrimination was insufficient in light of disproportionate burden placed on wireless carriers.[6]

Second, in 1996, the FCC clarified and upheld its decision in the *Ameritech Order*. There, in the context of implementing local competition provisions of the Telecommunications Act of 1996,[7] the Commission stated

> we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code . . . Exclusion and segregation were specific elements of Ameritech's proposed plan each of which the Commission held violated the Communications Act of 1934.[8]

In the same order, the Commission ruled that a wireless-only overlay plan proposed by the Texas Public Utility Commission for Houston and Dallas violated Sections 202(a)

---

6 Ameritech argued that creating a separate NPA code for wireless providers was justified because: (1) wireless carriers were largely responsible for exhausting the existing number supply; (2) the wireless overlay would provide the necessary relief; and, (3) the transfer of numbers would not have a significant impact on wireless customers or carriers. *Ameritech Order* at 4606 (¶ 23).

7 Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter "1996 Act").

8 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order,* 11 FCC Rcd 19392 (¶ 285) (hereinafter "*Second Report and Order*"), *petitions for reconsideration pending, vacated in part, People of the State of California v. FCC,* 124 F.3d 934 (8th Cir. Aug. 22, 1997), *cert. granted, sub nom. AT&T Corp. v. Iowa Utilities Board,* 118 S.Ct 879 (Jan. 26, 1998).

and 201(b) of the Act and was inconsistent with the numbering policies adopted in the *Ameritech Order* and clarified in the *Second Report and Order.*[9]

The CDPUC now asks the FCC to open a rulemaking proceeding to amend its policy with respect to service- or technology-specific overlays in order to allow states to adopt such overlays as a means of addressing telephone number exhaust problems caused by the growth of local competition.[10] The CDPUC argues that despite its efforts and the efforts of the FCC, "no competition between wireline and wireless industries currently exists. Nor does it appear that competition between the two industries will exist in the very near future."[11] The CDPUC argues that the elements first identified by the Commission in the *Ameritech Order*, exclusion, segregation, and take-back, only present a problem when there is competition between wireless and wireline service providers. It contends that excluding wireless customers from taking numbers in the old NPA, segregating wireless customers into a separate area code, and taking-back only wireless numbers will have no anticompetitive effect until and unless wireless service providers compete with wireline service providers.[12] Accordingly, Connecticut asks the FCC to declare that FCC examination of overlay plans for the elements of exclusion,

---

9 *Id.*, at ¶ 304-305.

10 Petition at 2-4.

11 *Id.*, at 8.

12 *Id.*, at 5, 9-10.

segregation, and take-back should not be made unless first it is determined that competition exists between wireless and wireline carriers.[13]

II. DISCUSSION

The CDPUC's analysis of both the Commission's rationale behind its numbering policy and the effect that service- or technology-specific overlays would have on the carriers and their customers is seriously flawed. As such, the FCC should deny the CDPUC Petition.

A. The CDPUC's Analysis of FCC Policy Decisions Affecting Wireless Providers Is Seriously Flawed.

The CDPUC argues that the FCC's policy with respect to service- or technology-specific overlays should not apply until or unless competition exists between wireless and wireline carriers.[14] It argues, further, that FCC regulatory policies have afforded wireless service providers preferred regulatory treatment in several respects.[15] It contends that since the FCC does not regulate wireless and wireline service similarly,

---

[13] *Id.*, at 10.

[14] *Id.*, at 7.

[15] The CDPUC argues that provisions enacted in the Omnibus Budget Reconciliation Act of 1993 (adding Section 332(c) to the Communications Act), uncertainty concerning application of the universal service requirements of Section 254(f) of the Communications Act to wireless service providers, and the Commission's decision to require a different implementation schedule for wireless number portability are examples of policies and laws discriminating in favor of wireless service providers. Petition at 9.

the Commission should not prohibit overlay plans that treat wireless service differently than wireline service.[16]

1. The FCC's Policy Prohibiting Service Specific Overlays Is Not Dependent on a Finding that Competition Exists Between Wireless and Wireline Service Providers.

The CDPUC's analysis of FCC policy decisions is flawed. First, the CDPUC is incorrect that the Commission's policy prohibiting service- and technology-specific overlays depends on some level of competition existing between wireless and wireline carriers. The FCC, both on its own initiative and in implementing the provisions of the 1996 Act, has amended its regulatory policies in an effort to promote competition between local exchange service providers and other telecommunications service providers. As part of that goal, the Commission has proposed rule changes to facilitate wireless/wireline competition.[17]

In both the *Ameritech Order* and the *Second Report and Order*, the Commission found that service- or technology-specific overlays run counter to the Commission's goal of promoting inter-service competition. The Commission found that service- or technology-specific overlays are "unreasonably discriminatory and would unduly inhibit competition."[18] In reaching this conclusion, the Commission was only concerned with

---

[16] *Id.*, at 9-10.

[17] *See, e.g.,* Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 8965 (1996).

[18] *Second Report and Order* at ¶ 285.

preventing barriers to competition and did not undertake to analyze the level of competition then existing between wireless and wireline companies. Thus, one must conclude that the level of competition existing at the time between wireless and wireline carriers did not form a basis of the Commission's decision.

Because the level of competition between different industry segments was not a basis for the Commission's decision to prohibit service- and technology-specific overlays, evidence of the level of competition existing today should not be considered in any review of the merits of that policy decision. Accordingly, the evidence presented by the CDPUC that wireless and wireline service providers do not compete in Connecticut, regardless of its accuracy and regardless of whether that level has changed since the *Second Report and Order*, is entirely irrelevant.

2. The FCC's Decision to Prohibit Service- and Technology-Specific Overlays Is Consistent with Recent FCC Policy Decisions Promoting Wireless/Wireline Competition.

The CDPUC alleges that the FCC regulates wireless and wireline carriers differently and that the Commission should therefore not be concerned with numbering overlay plans that treat carriers differently. GTE believes that the CDPUC mischaracterizes the nature of FCC policy decisions affecting wireless service providers. GTE also believes that abandoning the FCC's policy prohibiting service- and technology-specific overlays would be contrary to a number of other FCC policy decisions designed to facilitate competition between wireless and wireline carriers.

Prior to passage of the 1996 Act, communications laws and FCC policies based on those laws tended to foster disparate treatment of different types of services. Because these policies and provisions created barriers to inter-service competition, the

1996 Act added provisions and required the FCC to take steps to eradicate competitive barriers. In keeping with that mandate, the FCC has adopted numerous policies and imposed several mandates on wireless service providers in the name of promoting competition between wireless and wireline service providers.

Two of the examples cited by the CDPUC as examples of disparate treatment for wireless service providers are actually efforts by the FCC to put wireless and wireline carriers on equal competitive terms.[19] Thus, regarding universal service, the CDPUC claims that uncertainty exists as to whether Section 254(f) of the Act, requiring, *inter alia*, all providers of intrastate telecommunications services to contribute to state universal service funds, applies to wireless carriers. GTE notes, however, that the uncertainty alluded to by the CDPUC no longer exists. In October of 1997, the FCC

---

[19] The third example cited by the CDPUC, that the Omnibus Budget Reconciliation Act of 1993 adopted provisions for wireless carriers that do not apply to other service providers is no longer valid. Section 332(c) of the Act, 47 U.S.C. § 332(c), authorizes the FCC (1) to forbear from applying certain statutory provisions to commercial mobile radio services ("CMRS") providers; (2) to preempt state CMRS entry regulation; and (3) to preempt state CMRS rate regulation. The 1996 Act, however, gave the FCC similar authority with respect to all telecommunications services. Thus, Section 10 to the Act, 47 U.S.C. § 160, gives the FCC more extensive forbearance authority than Section 332(c), and Section 253, 47 U.S.C. § 253, authorizes the FCC to preempt state and local entry regulation. While the 1996 Act does not authorize the FCC to preempt state rate regulation of any other service provider, extensive state rate regulation should diminish as these services become more competitive.

ruled that Section 332(c)(3) of the Act does not prevent states from imposing universal service fund contribution requirements on CMRS providers.[20]

Actually, contrary to the CDPUC characterization, universal service is an example of how the 1996 Act has resulted in wireless carriers being regulated similar to all other carriers. More and more, carriers – like wireless and competitive local exchange carriers – that have not traditionally funded federal mandate programs are being required to participate in and fund such programs.

Another example of this policy shift is number portability. The CDPUC alleges that because the FCC allowed wireless carriers to implement number portability on a different schedule than wireline carriers, the FCC is granting favorable regulatory treatment to wireless carriers. Contrary to this assertion, however, the different implementation schedules exist only because wireless number portability presents more complex implementation issues than wireline number portability.[21]

Like universal service, number portability is an example of the FCC changing its policies to regulate wireless carriers more like other telecommunications service providers. In fact, in the number portability proceeding, the FCC has adopted a

---

[20] Petition of Pittencrieff Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995, *Memorandum Opinion and Order*, File No. WTB/POL 96-2, FCC 97-343 (released October 2, 1997).

[21] Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 95-116, 11 FCC Rcd 8352, 8440 (¶ 166) (1996) ("*Number Portability Order*").

wireless service provider number portability implementation requirement[22] over the strong objection of virtually every wireless service provider.[23] While some carriers initially supported a wireless number portability requirement, wireless carriers generally now argue that the costs of implementing wireless number portability could be better spent on more pro-competitive initiatives. Nonetheless, the FCC has not wavered from its contention that enforcing the requirement will promote wireless/wireline competition.

Thus, the examples cited by the CDPUC as instances of favorable treatment for wireless carriers are, in reality, examples of onerous regulations being placed on competitive wireless carriers in order to ensure that such carriers bear the same regulatory burdens as other classifications of carriers. The CDPUC's arguments are also internally inconsistent. The CDPUC criticizes the FCC for treating wireless and wireline carriers differently, even suggesting that this disparate treatment is a reason why wireless carriers do not compete with wireline carriers.[24] Yet, at the same time, the CDPUC asks the Commission to enable it to adopt a numbering policy that will perpetuate different treatment of wireless and wireline carriers.[25]

As is the case with number portability, GTE does not always agree with FCC decisions to impose costly regulations on competitive wireless carriers. Nonetheless, if

---

[22] Service provider number portability refers to a requirement that carriers be able to allow their customers to switch service providers without switching telephone numbers.

[23] GTE is among the carriers objecting to implementation of this requirement.

[24] Petition at 9.

[25] *Id.*, at 10.

the FCC is going to continue to impose regulatory requirements on wireless service providers under the guise of subjecting all carriers to similar regulation in order to level competitive playing fields, this concept must be applied in a consistent manner. Thus, if other regulatory programs are geared toward promoting wireline/wireless competition, the FCC's numbering policy with respect to service- and technology-specific overlays must not be altered.

B. The Elements of Exclusion, Segregation, and Take-Back Discriminate Against Wireless Service Customers Whether or Not Wireless Service Competes with Wireline Service.

The CDPUC argues that the elements of exclusion, segregation, and take-back should only be examined upon a finding that wireless services compete with wireline services. It argues that these elements can only have an anticompetitive effect if competition exists.[26] This analysis, however, ignores an important aspect of the Commission's findings with respect to service- and technology-specific overlays. In the *Ameritech Order,* the FCC found that wireless-only overlays "impose a disproportionate burden upon wireless carriers and their customers."[27] In particular, the FCC found that wireless customers "would suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new numbers."[28] Accordingly, the FCC concluded that a wireless-only overlay would constitute both

---

[26] *Id.*

[27] *Ameritech Order* at 4611 (¶ 35).

[28] *Id.*, at 4608 (¶ 27).

unreasonable discrimination under Section 202(a) of the Act, and an unreasonable practice under Section 201(b) of the Act.[29]

The FCC's findings in the *Ameritech Order* are not dependent on the existence of competition. While the FCC found that the existence of exclusion, segregation, and take-back would tend to make customers favor a wireline competitor over a wireless customer,[30] the harms identified by the Commission exist whether or not inter-service competition exists. Whether competition exists or not, the elements of segregation, exclusion, and take-back present in wireless-specific overlays work to place a disproportionate burden on wireless carriers and their customers. Therefore, whether competition exists or not, service- or technology-specific overlays violate Sections 202(a) and 201(b) of the Act.

C. Service Specific Overlays Are Not the Answer to Telephone Number Exhaust Problems.

The CDPUC argues that it should be allowed to implement a statewide wireless-only overlay in order to address the exhaust of numbers in the 203 and 860 area codes caused by the growth of local competition.[31] As such, the CDPUC seems to infer that creating a wireless only overlay will somehow stem the number exhaust problem. It will not. NPA overlays and geographic splits establish new NPAs thus generating new numbers that can be assigned to carriers and ultimately to customers. Service- or

---

[29] *Id.*, at 4607-4608, 4610-1612.

[30] *See, id.*

[31] Petition at 2.

technology-specific overlays do not provide any greater number exhaust relief than general overlays or geographic splits. Each of these "solutions" address only the symptom of number exhaustion, they do not stem the rate at which numbers become exhausted.

The telecommunications industry is working on developing solutions to the number exhaust problem. While these solutions are being developed, however, Connecticut and other states will be forced to adopt near-term plans to address number exhaust. It is important that the FCC ensure that states cannot choose to address number exhaust problems in a manner that will discriminate against any particular service provider or technology.

III. CONCLUSION

Service- and technology specific overlays should not be allowed by the Commission. Such overlays inhibit competition between different segments of the telecommunications industry and unreasonably discriminate against the segregated carriers and their customers. Moreover, service- and technology-specific overlays do not provide any greater numbering relief than other relief plans. Accordingly, the FCC should deny the CDPUC Petition.

Dated: May 7, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating and wireless companies

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

By 

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036
(202) 463-5276

Their Attorneys

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on May 7, 1998 to the party listed below:

Donald W. Downes
Chairman
Connecticut Department of Public Utility Control
Ten Franklin Square
New Britain, CT 06051

Judy R. Quinlan